

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 4221 of 2006()

CRA.346/2004 of ADDL.SESIONS COURT, PATHANAMTHITTA
CC.57/2003 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA
.....

REVN. PETITIONER/APPELLANT/ACCUSED

SREEVALLABHAN, AGED 34 YEARS,
S/O.SUKUMARAN NAIR, VARIKKANAMALA,
KURUNGAZHA P.O., PULLAD, THIRUVALLA TALUK.

BY ADV. SRI.P.VIJAYA BHANU
ADV. SRI.PRASUN.S

RESPONDENTS/RESPONDENTS/ COMPLAINANT& STATE:

1. P.V.SHAJI, MEMANA HOUSE,
PULLAD P.O., REPRESENTED BY HIS POWER OF
ATTORNEY HOLDER, T.V.VARGHESE, BIJI BHAVAN,
PULLAD P.O., THIRUVALLA.
2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR ADV. SHRI C.K. SURESH.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 30/11/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.T. SANKARAN, J.

.....
CRL. R.P. 4221 OF 2006
.....

Dated this the 30th November , 2006

O R D E R

The petitioner, who is the accused in C.C.No. 57 of 2003 on the file of the court of the Chief Judicial Magistrate, Pathanamthitta was found guilty of the offence under section 138 of the Negotiable Instruments Act and was sentenced to pay a fine of Rs.1,50,000/-, and in default of payment of fine, to undergo simple imprisonment for a period of six months. The trial court held that if fine amount is realised, the same shall be disbursed to the complainant as compensation under section 357(1) of the Code of Criminal Procedure . The petitioner challenged the conviction and sentence in appeal. The appellate court confirmed the conviction and sentence and dismissed the appeal.

2. The case of the complainant is that in discharge of a legally enforceable debt of Rs.1,50,000/-, the accused issued Ext.P2 cheque in favour of the complainant. The cheque was returned unpaid on the ground of insufficiency of funds in the account of the accused. Ext. P5 notice was issued to the accused. But he did not repay the amount . The case of the accused in his 313 Cr .P.C. Statement is that he had not

issued a cheque to the complainant and that it was issued by the younger brother of the accused. The trial court compared the admitted signature of the accused in Ext.P7 acknowledgment card and the signature in Ext.P2 cheque and came to the conclusion that the signature in both these documents are similar. The trial court also noticed that though the accused contended that the cheque was issued by his brother, he did not deny his signature in Ext. P2 cheque. It was also held that if the drawer was the brother of the accused, the bank would have returned the cheque on that ground. But in the case on hand, it was not returned on that ground, but on the ground of insufficiency of funds. The trial court also verified the vakalath, bail bond, bail application etc. to ensure as to whether the signature in the cheque is similar to the one in those documents and came to the conclusion against the contentions raised by the accused. The trial court came to the conclusion that Ext.P2 cheque was issued by the accused himself. The fact that no reply was sent by the accused to Ext.P5 notice was also taken note of by the trial court. It was held that the contention as raised in the 313 statement was only an afterthought. The

appellate court also considered the documentary and oral evidence and concurred with the view taken by the trial court .

3. The courts below have not awarded any substantive sentence of imprisonment, but awarded only a sentence to pay fine of Rs.1,50,000/-. Since the cheque was issued for Rs.1,50,000/-, it cannot be said that the sentence awarded is excessive. There is no ground for interference in revision as the petitioner could not point out any illegality, irregularity or impropriety in the judgment impugned. Learned counsel for the petitioner submitted that the petitioner may be granted six months' time to pay the fine amount.

4. Since the conviction and sentence are not being interfered with, I do not think it is necessary to issue notice to the first respondent/complainant before considering the request as to whether time has to be granted to the accused to pay the fine amount. In the facts and circumstances of the case, I am inclined to grant three months' time to the petitioner/accused to pay the fine amount.

In the result, the Crl. Revision Petition is dismissed and the conviction

and sentence are confirmed. However, the petitioner is granted three months' time to pay the fine amount of Rs.1,50,000/-. Execution of default sentence shall be kept in abeyance for a period of three months.

**K.T. SANKARAN,
JUDGE.**

lk